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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 LARRY DEAN PADILLA,

Plaintiff,

15
16 v.

17 M. S. EVANS,

18 Defendants.
19

CASE NO. C 06-1725 MJJ

**DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION
TO COMPEL DISCOVERY**

20 Defendant Evans (Defendant) respectfully requests that this Court deny Plaintiff's Motion to
21 Compel Discovery on the grounds that Plaintiff seeks discovery of matters which impose an
22 undue burden of production on Defendant, violate the Constitutional right to privacy of
23 numerous inmates and correctional staff, and with respect to some of the requested documents,
24 are not in Defendant's possession.

25 **INTRODUCTION**

26 On March 7, 2006, Plaintiff Larry Dean Padilla (Plaintiff) filed suit against Defendant
27 alleging that Defendant and his staff have violated his Eighth Amendment right to be free from
28 cruel and unusual punishment by periodically denying him outdoor exercise. (Ct. Docket # 1.)

1 On March 31, 2006, the Court issued an Order of Service after finding Plaintiff's Eighth
 2 Amendment claim cognizable. (Ct. Docket # 5.) On January 29, 2007, Plaintiff filed his First
 3 Amended Complaint adding a new Defendant and an equal protection claim. (Ct. Docket # 59.)

4 On May 15, 2007, Plaintiff served Defendant with a second set of requests for production of
 5 documents. (Pl.'s Mot. to Compel Disc., Ex. A.) In his requests, Plaintiff seeks all inmate
 6 appeals submitted from March 23, 2004 until the present by other prisoners at Salinas Valley
 7 State Prison (SVSP) grieving "lockdowns." (*Id.*) Plaintiff also seeks all inmate appeals which
 8 were "screened out" pertaining to "lockdowns" on facility "A" at SVSP. (*Id.*) On March 22,
 9 2007, Defendant objected to these requests on the grounds that the requests were overly broad
 10 and unduly burdensome, vague and ambiguous as worded, irrelevant to the claim or defense of
 11 any party, and that production of such documents may violate the constitutional right to privacy of
 12 both the individual inmates and staff members named within the appeal. (*Id.*) In his response,
 13 Defendant further explained to Plaintiff that because the SVSP Appeals Office does not keep
 14 copies of appeals which have been screened out, such documents could not be produced to
 15 Plaintiff. (*Id.*) On April 9, 2007, Plaintiff wrote a letter to Defendant in an effort to meet and
 16 confer regarding this discovery dispute. (Pl.'s Mot. Compel Disc., Ex. B.) On April 27, 2007,
 17 Defendant responded to this letter further explaining why Plaintiff's requests were objectionable
 18 and why the requested documents would not be produced. (*Id.* at Ex. C.)

19 On June 29, 2007, Plaintiff filed a Motion to Compel Discovery (Ct. Docket # 82.)
 20 Defendant now files this Opposition to Plaintiff's Motion to Compel.

21 ARGUMENT

22 **PLAINTIFF SEEKS DISCOVERY OF MATERS WHICH ARE** 23 **OBJECTIONABLE UNDER FEDERAL RULES OF CIVIL** 24 **PROCEDURE AND THE UNITED STATES CONSTITUTION.**

25 Generally, parties may obtain discovery regarding any matter, not privileged, that is
 26 "relevant to the claim or defense of any party" Fed. R. Civ. P. 26(b)(1). However, the right
 27 to discovery is not unlimited in scope. Indeed a court shall limit discovery otherwise permitted if
 28 it determines that "the discovery sought is unreasonably cumulative or duplicative, or is

1 obtainable from some other source that is more convenient, less burdensome, or less expensive.”
 2 Fed. R. Civ. P. 26(b)(2)(C). In the context of a motion to compel, a court may deny a motion
 3 where the discovery sought “would not aid in the exploration of a material issue . . . [or it]
 4 would impose an undue burden on the responding party or its benefits are outweighed by its
 5 burdens.” *Nat’l Union Fire Ins. Co. of Pittsburg, Pa. v. Elec. Transit Inc.*, No. C 04-3435 JSW,
 6 2006 WL 1525809 at *2 (N.D. Cal. June 1, 2006) (citations omitted). Furthermore, “[f]ederal
 7 courts ordinary recognize a constitutionally based right to privacy which can be raised in
 8 response to discovery requests.” *Soto v. City of Concord*, 162 F.R.D. 603, 616 (E.D. Cal. 1995).

9 In his Motion to Compel and in his Second Request for Production, Plaintiff requests the
 10 following documents from Defendant: 1) “all administrative complaint(s) (i.e. CDC [form]-
 11 602’s), filed by other prisoners at Salinas Valley State Prison with respect to lockdowns starting
 12 upon my arrival on March 23, 2004 to the present date 2007”; and 2) all “CDC-602’s” [inmate
 13 appeals] that were “Screened Out” that pertained to lockdowns on thus yard “A” Salinas Valley
 14 State Prison [sic] by the Inmate Appeals Coordinator.” (Pl.’s Mot. Compel, Ex A.)

15 For the foregoing reasons, Defendant cannot produce the documents requested.

16
 17 **A. The Production of the Documents Sought in Both of Plaintiff’s Requests for**
 18 **Production Would Be Unduly Burdensome and Would Not Benefit Plaintiff in the**
Exploration of a Material Issue.

19 A court shall limit discovery where “the burden or expense of the proposed discovery
 20 outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(2)(C); *Nat’l Union*, 2006 WL 1525809 at *2.
 21 In his Motion to Compel, Plaintiff seeks access to “all administrative complaints . . . filed by
 22 other prisoners at Salinas Valley State Prison [SVSP] with respect to lockdowns starting upon his
 23 arrival to [SVSP] on March 23, 2004 to [the present] date.” (Pl.’s Mot. Compel at 3.) Plaintiff’s
 24 request is unduly burdensome and would impose a great hardship on the limited resources of the
 25 California Department of Corrections and Rehabilitation. This is because SVSP currently houses
 26 4,769 inmates, many of whom file between five and one hundred and thirty inmate appeals in a
 27 given year. (Decl. Variz ¶ 3.) Indeed, the SVSP Appeals Office typically processes about one
 28 hundred and sixty inmate appeals a day. (*Id.*) While each inmate’s appeals are maintained for

1 five years in an appeals file (A-File), these files are not maintained, nor searchable through,
 2 electronic format. (*Id.*) Accordingly, in order to respond to Plaintiff's request, CDCR personnel
 3 would have to spend countless hours sifting through numerous inmate's A-files in search of any
 4 grievance which challenges a particular facility being placed on a modified program or
 5 "lockdown." (*Id.*) Such a result would consume a vast amount of CDCR resources. (*Id.*)

6 Furthermore, Plaintiff's request is so broadly worded that it likely encompasses many
 7 inmate appeals which would be irrelevant to the claim or defense of either party to this lawsuit.
 8 Plaintiff's principal grievance in this case is that he is allegedly being denied a sufficient amount
 9 of outdoor exercise do to his facility being periodically placed on "lockdown." (Pl.'s Am.
 10 Compl. at 3, 5-7.) Under SVSP policy there are a variety of ways in which a facility can be
 11 placed on a modified program, some of which do not require the cell confinement of prisoners.
 12 (Decl. Variz ¶ 3.) Thus, it is likely that many of the inmate appeals for which Plaintiff seeks
 13 access are not grieving the same issue alleged in his Amended Complaint.

14 Because the burden and expense of requiring the SVSP Inmate Appeals Office to sift
 15 through numerous inmate's A-Files in search of the documents Plaintiff requests would impose a
 16 great hardship on Defendant, and because such discovery is unlikely to provide Plaintiff much
 17 benefit, the Court must deny Plaintiff's Motion to Compel. Fed. R. Civ. P. 26(b)(2)(C).

18
 19 **B. Production of Inmate Appeals Filed By Other Inmates Violates the Other Inmates**
 20 **Right to Privacy.**

21 "Federal Courts ordinarily recognize a constitutionally-based right of privacy that can be
 22 raised on a response to discovery requests." *Soto*, 162 F.R.D. at 616. "Resolution of a privacy
 23 objection . . . requires a balancing of the need for the information sought against the privacy right
 24 asserted." *Id*; see also *Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 604-05 (C.D. Cal.
 25 1995) (recognizing an objection based on an asserted right to privacy and balancing the need for
 26 the information against the claimed privacy right); *Zackery v. Stockton Police Dep't*, No. CIV S-
 27 05-02315 MCE DAD P, 2007 WL 1665634 (E.D. Cal. June 7, 2007); *Stafford v. Soc. Sec.*
 28 *Admin.*, No. C-05-113 EDL (N.D. Cal. Apr. 3, 2006). When balancing the two interests, courts

1 should consider “whether the information sought is relevant and, if so, whether less intrusive
2 means could yield the information sought.” *Nat’l Union*, 2006 WL 1525809 at *2.

3 In his Motion to Compel, Plaintiff argues that reviewing other inmate’s administrative
4 appeals is relevant because these appeals illustrate an institution-wide concern regarding
5 “lockdowns.” (Pl.’s Mot. to Compel at 6-7.) However, this need for discovery is grossly
6 outweighed by the privacy concerns of other inmates housed in SVSP. Inmate appeals at SVSP
7 are restricted from public view because they often grieve issues which are personal in nature.
8 (Decl. Variz ¶ 3.) Allowing Plaintiff access to such documents could potentially cause great
9 embarrassment for the inmate named in the appeal. (*Id.*) Furthermore, because many inmate
10 appeals allege staff misconduct, affording Plaintiff access to other inmate’s appeals raises safety
11 concerns for the individual staff member named in the appeal as he or she could become a target
12 for assault. (*Id.*) Because Plaintiff is seeking access to such documents merely to show that
13 other inmates share his discontent with modified programs, the privacy interest of other inmates
14 and the safety concerns of correctional staff named in the inmate appeal greatly outweigh
15 Plaintiff’s need for such documents. *Soto*, 162 F.R.D. at 616; *Ragge*, 165 F.R.D. at 604-05.

16 **C. Defendant Cannot provide Plaintiff with Documents in Response to His Request**
17 **For “Screened Out” Inmate Appeals Because Defendant is Not in Possession of**
Such Documents.

18 California Code of Regulations, title 15, § 3084.3(a), requires an Appeals Coordinator to
19 screen every inmate appeal for procedural compliance with the California Code of Regulations.
20 Inmate Appeals may be rejected for a variety of reasons. *See* Cal. Code Regs. tit. 15, §
21 3084.3(c). In his Second Request for Production of Documents and in his Motion to Compel,
22 Plaintiff seeks all inmate appeals which were “screened-out” by the Appeals Coordinator which
23 pertained to lockdowns on “A” facility at SVSP. (Pl.’s Mot. Compel at 10, Ex. A.) As
24 Defendant has explained to Plaintiff, the requested documents cannot be produced in response to
25 this request because they are not in Defendant’s possession. (Pl.’s Mot. Compel, Ex. C.) Due to
26 the high number of inmate appeals received by the SVSP Appeals Office, inmate appeals which
27 have been “screened out” are not retained by the Appeals Office, but rather returned to the inmate
28 submitting the appeal along with a form notifying the inmate of the reasons why the appeal was

1 screened out. (Decl. Variz ¶ 4.) The only record that is maintained of a screened out appeal is
 2 that the appeal is recorded in the institution's Inmate Appeals Automated Tracking System along
 3 with a description as to the reasons why the appeal was screened-out. (*Id.*) Accordingly,
 4 Defendant is unable to provide Plaintiff copies of the screened-out inmate appeals he requests.

5 CONCLUSION

6 Because Plaintiff seeks the production of documents which would pose an undue burden on
 7 Defendant due to their voluminous nature and would likely prove to be of little benefit to
 8 Plaintiff in prosecuting his case, because disclosure of the requested documents may violate the
 9 privacy rights of the other inmates, and because some of the documents in which Plaintiff is
 10 seeking access are not in Defendant's possession, Defendant respectfully requests that Plaintiff's
 11 Motion to Compel be denied. Fed. R. Civ. P. 26(b)(2)(C); *Soto*, 162 F.R.D. at 616; *Nat'l Union*,
 12 2006 WL 1525809 at *2.

13
 14 Dated: July 6, 2007

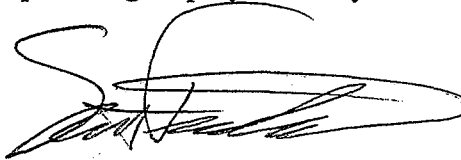
15 Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Padilla v. Evans**

No.: **C 06-1725 MJJ**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 6, 2007, I served the attached

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY

DECLARATION OF T. VARIZ IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL DISCOVERY

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Larry D. Padilla (P-05966)
Salinas Valley State Prison
P. O. Box 1020
Soledad, CA 93960-1020
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 6, 2007, at San Francisco, California.

M. Luna

Declarant



Signature